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No. 07-499

IN THE

Supreme Court of the United States

DANIEL GIRMAI NEGUSIE,
Petitioner,

v.

MICHAEL B. MUKASEY,
UNITED STATES ATTORNEY GENERAL
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF *AMICI CURIAE* OF THE BECKET FUND FOR RELIGIOUS LIBERTY AND 16 RELIGIOUS AND RELIGIOUS FREEDOM ORGANIZATIONS IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI*[*]

The Becket Fund for Religious Liberty is a nonpartisan, interfaith, public-interest law firm dedicated to protecting the free expression of all religious traditions. The Becket Fund litigates on behalf of people of all faiths in support of these principles in state and federal courts throughout the United States, as both primary counsel and *amicus curiae*. It also litigates and advocates on behalf of these principles before international fora, including the European Court of Human Rights, the United Nations Human Rights Council (where it has consultative status) and the appellate courts of many nations. Both in the United States and abroad, the Becket Fund has advocated for a vision of religious liberty that affirms that the sphere of conscience must remain inviolate.

The sixteen religious and religious freedom organizations listed below represent or protect many different, often very different, religious traditions. But each of them has joined this brief because it believes that the sphere of conscience should be protected from government interference. These organizations have in their efforts frequently

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[*] Undersigned counsel authored this brief in whole. No person other than counsel for *amici* has made a monetary contribution intended to fund the preparation or submission of this brief.

encountered attempts by governmental actors to interfere with freedom of conscience. They therefore have an interest in seeing American asylum law interpreted to condemn, as religious persecution, interference with the freedom of conscience. In particular they believe forced participation in acts that violate the conscience is itself persecution, and that the government should not therefore deem Petitioner Negusie a persecutor. The following organizations have joined this brief:

American Islamic Congress
American Islamic Forum for Democracy
Catholic Legal Immigration Network, Inc. (CLINIC)
China Aid Association
Dalit Freedom Network
Hindu American Foundation
Hudson Institute's Center for Religious Freedom
Human Dignity International
Institute for Global Engagement
The International Society for Krishna Consciousness
Jubilee Campaign
National Council of the Churches of Christ in the USA
Open Doors USA
Queens Federation of Churches
Sikh American Legal Defense and Education Fund
United Sikhs

SUMMARY OF ARGUMENT

Negusie was forced to participate in the persecution of his fellow believers. He contends that this makes him not a persecutor, but a victim of persecution under the asylum laws. Brief for Petitioner ("Pet. Br.") at 3.

He is far from alone. Authoritarian governments around the world and throughout history have forced religious people to participate in the persecution of fellow believers in order to violate their own consciences. The reason is simple: conscience is a threat to tyranny.

In systems where the state holds itself to be the source of all rights, the demands of conscience make its authority less than absolute. Thus the authoritarian state does not limit its attack on religious liberty to outward manifestations of belief in the public square. It also attempts to invade the sphere of conscience itself—what is called in some contexts the *forum internum*[1]—by force. The state

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[1] The *forum internum* is the "the private, inner-life of religious belief." M. Todd Parker, *The Freedom to Manifest Religious Belief: An Analysis of the Necessity Clauses of The ICCPR and the ECHR*, 17 DUKE J. OF COMP. & INT'L LAW 91, 94 (2006). It is "subject to unqualified protection in all the key human rights instruments * * *. PAUL M. TAYLOR, FREEDOM OF RELIGION: UN AND EUROPEAN HUMAN RIGHTS LAW AND PRACTICE 115 (2005). The concept has its origins in medieval

uses the threat of death or torture to cause the persecuted to shame, hurt, torture or kill fellow believers. By forcing these victims to commit acts they abhor, the state aims not only to sow mistrust among fellow believers. It also seeks to burden the individual believer's conscience with memories of immoral acts committed under duress. In short, the state attempts to alienate the believer from both others and herself.

American asylum law cannot pass over this evil in silence. Forcing someone to violate his conscience contradicts the very core of the American conception of freedom of belief. The moral condemnation of another state inherent in every grant of asylum must therefore be extended to believers who are forced under threat of death or torture to participate in the persecution of their co-religionists. And the Fifth Circuit's decision should be reversed not least because it tacitly consents to this form of religious persecution—common to authoritarian governments around the world—by holding the form of persecution to be the very reason the persecuted cannot later seek asylum.

European legal thought, *see*, *e.g.*, James Q. Whitman, *The Moral Menace of Roman Law and the Making of Conscience: Some Dutch Evidence*, 105 YALE L.J. 1841, 1861 (1996) ("In the medieval theological tradition, Roman law, whatever its authority, did not govern the *forum internum*, the internal court of conscience, presided over by the confessor.").

ARGUMENT

I. American asylum law should recognize and condemn the evil of forced participation in persecution of fellow believers.

A. Authoritarian governments typically target religious people and institutions because they view them as ideological competitors.

The primary concerns of authoritarian regimes are control and ultimate loyalty to the state apparatus. Authoritarian governments around the world frequently invoke security as a pretext for suppressing freedom of expression and freedom of association, both cornerstones of the freedom of religion.[2] Dissenters, especially from minority faiths, are prosecuted and punished for charges of subversion, terrorism, sedition, or counterrevolution under which peaceful critics and political opponents can be detained.[3]

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[2] *See*, *e.g.*, Shima Baradaran-Robinson, Brett G. Scharffs & Elizabeth A. Sewell, *Religious Monopolies and the Commodification of Religion*, 32 PEPPERDINE L. REV. 885, 929-34 (2005).

[3] Howard French, *China Confirms Protests Staged by Uighur Muslims*, N.Y. TIMES, April 3, 2008 at A12 (Uighur Muslims demonstrating for religious freedom described as "splittists."

Religious believers and dissenters are regarded by totalitarian regimes as a particular threat to state authority and security because religious believers appeal to an authority higher than the state, an unacceptably destabilizing force in states where order and control depend on the people's submission to the state as the supreme authority. Thus regimes single out religious believers by virtue not only of what they do, but of who they are. Dozens of countries either perpetrate or tolerate the forced persecution of religious believers.[4] Often the methods used are brutal, and involve coercing religious believers to violate their consciences by blaspheming, renouncing, or participating in activities contrary to their beliefs, in some cases including the direct torture of co-religionists. All of

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[4] The U.S. Secretary of State, pursuant to the International Religious Freedom Act of 1998, 22 U.S.C. § 6442(b), has designated eight countries a "Country of Particular Concern" ("CPC") – countries that have engaged in "particularly severe violations of religious freedom" including torture or cruel, inhuman, or degrading treatment. U.S. DEP'T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007 [hereinafter US IRF REPORT 2007], available at http://www.state.gov/g/drl/rls/irf/2007/. Eritrea is currently designated one of the eight CPCs. The U.S. State Department's Office of International Religious Freedom, which makes CPC recommendations to the Secretary, reported on an additional 13 countries with significant religious freedom problems in 2007.

The United States Commission on International Religious Freedom annually publishes a study of 26 countries it considers has significant religious freedom problems, including Eritrea.

these methods are designed to reinforce the ideology or authoritarian structure the regime deems necessary by clearing away the ideological competitor of religious belief.

B. Forced persecution is one method authoritarian governments use to invade the sphere of conscience.

1. Authoritarian governments use forced persecution to undermine the conscience.

A particular method of indoctrination in totalitarian regimes is psychological. Psychological coercion is all the more devastating to its victims as it carries with it the intuition of the victim's own spiritual failure, self-loathing, and despair—it is torture that continues through memory.[5] This peculiar form of persecution has long been a standard method among tyrants and oppressors, be it the Nazis, the Soviet Union, Idi Amin or Pol Pot; all

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[5] The definition of "torture" under the Convention Against Torture—in immigration law a narrower claim than a religious persecution claim—includes infliction of severe suffering that is purely mental. *See* 8 C.F.R. § 208.18(a)(1) ("Torture is defined as any act by which severe pain or suffering, ***whether physical or mental***, is intentionally inflicted on a person * * *.) (emphasis added). *See also* United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

forced their subjects to spy on one another, brutalize one another, and even execute one another.

The psychological torment that this engenders is exquisitely painful when applied in the context of religious belief. That's because the entire basis for the victim's conscientious objection, and hence, the government's oppression, is the victim's conviction that there is a transcendent standard of good and evil to which he or she must adhere at all costs and which he or she has now betrayed out of weakness or cowardice. This intentionally inflicted despair is a cruel twist on the more straightforward methods of persecution employed by authoritarian governments.

2. The Piteşti Experiment

Perhaps the paradigmatic example of a government attack on conscience designed to undermine resistance to an authoritarian regime is the *Experimentul Piteşti* ("Piteşti Experiment"). The Romanian Communist government used Piteşti prison outside Bucharest for the violent reeducation of political and religious prisoners from 1949-1952:

> Prisoners were compelled to confess their own crimes against the state and to betray others, even beloved family members. But since the point of Pitesti was not just extortion of information but re-education

> (that is, brainwashing), the work proceeded in a series of "unmaskings." The phase of "public moral unmasking" required the prisoner to blaspheme and renounce their deepest emotional ties and spiritual convictions: "I lied when I said 'I believe in God.' I lied when I said, 'I love my mother and my father.'" * * * Christians were compelled to participate in blasphemous versions of Romanian Orthodox liturgical rites: a parody baptism was performed as their heads were dunked in a bucket of urine and feces.
>
> * * **
>
> In the final phase of unmasking, prisoners were required to prove their full conversion by torturing other prisoners, including their best friend. * * * This ingenious step insured that the spirit would be utterly broken, and that distrust and misery would make cooperation in an uprising much less likely.

Frederica Mathewes-Greene, *Abu Ghraib and Pitesti*, DALLAS MORNING NEWS, May 26, 2004. The prisoners' conscience had to be crushed to make way for Marxism:

> It was necessary in the project to repress any tendency to return to an anti-Marxist equilibrium * * * based on the following principles of life: faith in God, tradition and family; * * * friendship; love in its usual worldly sense and love of mankind in general; and finally, one's own ego, with its own intimate life and its anxieties.
>
> * * **
>
> In order to extinguish the last trace of respect for holy things, ritual parodies of all Christian ceremonies were arranged, with students of theology compelled to modify prayer texts, substituting vulgar oaths for religious phrases.

DUMITRU BACU, THE ANTI-HUMANS 87-89 (1971).

At Piteşti, prisoners were thus forced to participate in persecution of fellow believers in two distinct ways: (1) through physical torture of other prisoners and (2) through participation in ceremonies they and their fellow believers believed to be blasphemous. Moreover, both forms of forced participation in persecution had at least ***two*** victims; believers were the vehicles of persecution for both themselves and others. In fact, the very reason the guards at Piteşti conducted blasphemous ceremonies ***in public*** was to burden—to scandalize—the

consciences of both those participating and those watching.[6]

Yet under the Fifth Circuit's interpretation of the persecutor bar, all of the prisoners at Piteşti would be "persecutors" forbidden to seek asylum in the United States. Indeed, the Fifth Circuit would have called prominent Romanian dissident and exile Father Gheorghe Calciu-Dumitreasa a "persecutor," since he had, under duress, tortured other prisoners at Piteşti.[7] This absurd result contradicts the moral valence of American asylum law.[8]

C. Granting asylum to those forced, like Negusie, to participate in persecution of fellow believers reflects the moral condemnation of religious persecution embodied in American asylum law.

Granting asylum is not just a judgment about the blameworthiness of the asylum applicant, though it is that. *See* Pet. Br. at 26. It is also a moral condemnation of the government the asylum

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6 *See* BACU at 90-91.

7 *See* Patricia Sullivan, *Anti-Communist Priest Gheorghe Calciu-Dumitreasa*, WASHINGTON POST, Nov. 26, 2006, at C09; Mathewes-Green.

8 *See generally* Nicole Lerescu, Note, *Barring Too Much: An Argument in Favor of Interpreting the Immigration and Nationality Act Section 101(A)42 to Include a Duress Exception*, 60 VANDERBILT L. REV. 1875 (2007).

applicant is fleeing from. "[T]he persecution criterion codifies the substantive moral judgment that underlies a decision to grant asylum-namely, the judgment that a state has harmed its citizen illegitimately." Matthew E. Price, *Persecution Complex: Justifying Asylum Law's Preference for Persecuted People*, 47 HARVARD INT'L L.J. 413, 425 (2006). *See also Osaghae* v. *United States INS*, 942 F.2d 1160, 1163 (7th Cir. 1991) (quoting *Zalega* v. *INS*, 916 F.2d 1257, 1260 (7th Cir. 1990)) (Posner, J.) ("'Persecution' means, in immigration law, punishment for political, religious, or other reasons that our country does not recognize as legitimate."); *Dandan* v. *Ashcroft*, 339 F.3d 567, 573 (7th Cir. 2003) (same); *Fisher* v. *INS*, 79 F.3d 955, 961 (9th Cir. 1996) (persecution is "the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.") To withhold condemnation because the religious victim participated, under duress, in mistreating his fellow believers makes a hash of the moral basis for all asylum law. It is also out of step with our country's consistent conception of freedom of conscience and belief.

1. *American law has consistently condemned the use of government power to violate the conscience.*

American law has consistently condemned efforts to use the power of the state to force someone to say

or do something that violates her conscience. Perhaps the earliest example of this tendency is the Religious Test Clause in the original Constitution. It prohibits the government from requiring candidates for federal office to, among other things, swear an oath to uphold a particular religious view or to participate in a sacrament as a condition of obtaining or retaining office.[9] This is an early recognition that forcing a person to say something she does not believe in violates basic American conceptions of religious liberty.

More recently, this Court has rejected attempts to force religious believers to engage in what they believed to be idol worship—pledging allegiance to the flag. In 1940, the Court upheld a compulsory pledge statute against a Free Exercise challenge by a group of Jehovah's Witnesses, who believed reciting the Pledge of Allegiance was "bowing down" to a "graven image." *Minersville Sch. Dist.* v. *Gobitis*, 310 U.S. 586, 592 n.1 (1940). Justice Stone dissented, arguing that

> it is a long step, and one which I am unable to take, to the position that government may, as a supposed educational measure and as a means of disciplining the young,

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[9] *See* U.S. CONST. art. VI, § 3 ("no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States"). Michael W. McConnell, *The Origins and Historical Understanding of the Free Exercise Clause*, 103 HARVARD L. REV. 1409, 1473-74 & n.323 (1990).

> compel public affirmations which violate their religious conscience.
>
> * * * *
>
> The guaranties of civil liberty are but guaranties of freedom of the human mind and spirit and of reasonable freedom and opportunity to express them. They presuppose the right of the individual to hold such opinions as he will and to give them reasonably free expression, and his freedom, and that of the state as well, to teach and persuade others by the communication of ideas. The very essence of the liberty which they guaranty is the freedom of the individual from compulsion as to what he shall think and what he shall say, at least where the compulsion is to bear false witness to his religion. If these guaranties are to have any meaning they must, I think, be deemed to withhold from the state any authority to compel belief or the expression of it where that expression violates religious convictions, whatever may be the legislative view of the desirability of such compulsion.

Gobitis, 310 U.S. at 602-604 (Stone, J., dissenting). Three years later Jehovah's Witnesses brought

another Free Exercise challenge to a compulsory pledge statute.[10] This time this Court sustained the challenge, holding

> We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

West Virginia Bd. of Educ. v. *Barnette*, 319 U.S. 624, 642 (1943). The "sphere of intellect and spirit" in *Barnette* is the sphere of conscience, the *forum internum* that the First Amendment protects. The flip side of this protection is the condemnation of any "invasion" of this sphere. Granting asylum to those who are fleeing religious persecution is just such a condemnation.

2. *American condemnation of the use of government power to violate the individual conscience should be extended to Eritrea's use of force to coerce Negusie to persecute his fellow believers.*

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[10] *Barnette* v. *West Virginia Bd. Of Educ.*, 47 F. Supp. 251, 252 (S.D.W.Va. 1942) (plaintiffs contended that "the regulation amounts to a denial of religious liberty").

American law condemns Eritrea's persecution of Negusie for the same reasons it has consistently condemned invasions of the sphere of conscience. Forcing a religious person to harm his fellow believers is no less a violation of his conscience—and in some ways a greater one—than is physical torture. Eritrea's actions are meant to divide Negusie and his fellow believers both among themselves and within each conscience. Like the torturers of Piteşti, the Eritrean government aims to overcome any resistance to its rule by undermining the consciences of religious dissenters. American law condemns Eritrea's aims no less than it does those of the Piteşti Experiment. Its asylum laws should be interpreted to give force to that condemnation.

Were this Court by contrast to hold that coerced participation in the persecution of co-religionists is ***not*** itself persecution, it would create a particularly perverse incentive. Authoritarian governments would see an advantage in setting religious believers to torture one another, since that would automatically disqualify them from gaining asylum in the United States. In that scenario, the method of religious persecution (forcing a believer to do something that violates his conscience) would become the very reason why an asylum seeker could never receive asylum.

II. Eritrea and other human rights violators continue to engage in religious persecution designed to invade the sphere of conscience.

The persecution Negusie faced in Eritrea is widespread. Countries generally acknowledged to be the worst human rights violators in the world uniformly persecute believers—of many different faiths—in an attempt to disconnect them from their conscientiously held religious beliefs.

As Negusie points out, Eritrea is one of the world's worst violators of religious liberty principles. Pet. Br. 12-13. In fact, Eritrea is one of only eight countries in the world that the Secretary of State has designated as a "Country of Particular Concern" under the International Religious Freedom Act of 1998, 22 U.S.C. § 6442(b) ("IRFA"). The others are Burma, China, Iran, North Korea, Saudi Arabia, Sudan and Uzbekistan.[11] The United States government has also imposed export sanctions on Eritrea under the IRFA.[12].

And Negusie's predicament is by no means limited to Eritrean asylum seekers. As the following

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[11] U.S. DEP'T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2006, available at http://www.state.gov/g/drl/rls/irf/2006/; *see also* US IRF REPORT 2007.

[12] *See* Suspension of Defense Export Licenses to Eritrea, 71 Fed. Reg. 11281-03 (March 6, 2006)

examples show, the problem of government persecution aimed squarely at the conscience of religious believers is a ubiquitous one.

1. Religious persecution in North Korea

The Democratic People's Republic of Korea ("North Korea" or "DPRK") is a dictatorship led by Kim Jong Il, the late president Kim Il Sung's son. Along with Juche, an ideology of self reliance, the cult of personality organized around Kim Jong Il and Kim Il Sung is ideologically crucial to the maintenance of the North Korean regime.[13] The cult

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[13] The worship of Kim Il Sung and Kim Jong Il is outlined in the Ten Great Principles of Unique Ideology, announced in 1974:

1. Struggle with all your life to paint the entire society with the one color of the Great Leader Kim Il Sung's revolutionary thought.
2. Respect and revere highly and with loyalty the Great Leader Kim Il Sung.
3. Make absolute the authority of the Great Leader Kim Il Sung.
4. Accept the Great Leader Kim Il Sung's revolutionary thought as your belief and take the Great Leader's instructions as your creed.
5. Observe absolutely the principle of unconditional execution in carrying out the instructions of the Great Leader Kim Il Sung.
6. Rally the unity of ideological intellect and revolutionary solidarity around the Great Leader Kim Il Sung.

of personality is evidenced by omnipresent portraits of the Kims in every house and public building. Additionally, ideological statements and scriptures produced by the two leaders are the main basis of education for both children and adults. Children in schools are taught that the Kims came down from heaven and were placed on the top of Mount Paektu, where they were transformed into human beings. At public events, songs are sung that depict the leaders as saviors of the country as well as of each individual citizen.

> Indoctrination [in these ideologies is] intended to ensure loyalty to the system and the leadership, as well as conformity to

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7. Learn from the Great Leader Kim Il Sung and master communist dignity, the methods of revolutionary projects, and the people's work styles.
8. Preserve dearly the political life the Great Leader Kim Il Sung has bestowed upon you, and repay loyally for the Great Leader's boundless political trust and considerations with high political awareness and skill.
9. Establish a strong organizational discipline so that the entire Party, the entire people, and the entire military will operate uniformly under the sole leadership of the Great Leader Kim Il Sung.
10. The great revolutionary accomplishments pioneered by the Great Leader Kim Il Sung must be succeeded and perfected by hereditary successions until the end.

These principles are used in criminal cases as law.

> the state's ideology and authority. * * * Refusal on religious or other grounds to accept the leader as the supreme authority, exemplifying the state and society's needs, was regarded as opposition to the national interest and sometimes resulted in severe punishment.[14]

The DPRK government's view of religion as a threat to its authoritarian power can be seen in its Constitution, which Article 68 states, "No one may use religion as a pretext for drawing in foreign forces or for harming the State and social order." In a public lecture entitled "Let us crush the enemy's concealed conspiracy to propagate religions amongst us," the DPRK in 2005 proclaimed that the struggle to prevent religious penetration was a "serious and great ideological battle for the political and ideological protection of Our Revolutionary Leader and Beloved General Kim Il Sung." It also declared that it regards religion as a means of "toppling national systems," as a "breach of national self-reliance," and most ironically, a "violation of human rights."[15]

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[14] U.S. DEP'T OF STATE, NORTH KOREA: INTERNATIONAL RELIGIOUS FREEDOM REPORT, 2007. Available at http://www.state.gov/g/drl/rls/irf/2007/90140.htm (last visited June 20, 2008).

[15] Korea Institute for National Unification, White Paper on Human Rights in North Korea, 2007, (Aug. 31, 2007), at 184-5.

> The DPRK characterized "[m]ost religiously active people * * * as anti-national and counterrevolutionary hostile elements" who were then to be "subjected to ruthless persecution."[16] In 1962, "Great Leader" Kim Il Sung stated the reason for the mass disappearance and possible extermination of hundreds of thousands of religious believers:
>
> [We] cannot carry such religiously active people along our march toward a Communist society. Therefore, we tried and executed all religious leaders higher than deacon in the Protestant and Catholic churches. Among other religiously active people, those deemed malignant were all put to trial. Among ordinary religious believers, those who recanted were given jobs while those who did not were held in concentration camps.[17]

Religious activities that are not government-sponsored are "now almost nonexistent" and "government-sponsored religious groups exist to

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[16] *Id.* at 171.

[17] KOH TAE-WOO, NORTH KOREA'S POLICY ON RELIGION 79 (1989).

provide [the] illusion of religious freedom" in interactions with foreign visitors.[18]

2. Religious persecution in China

The Constitution of China purports to respect the freedom of religious belief or non-belief. However, the Chinese constitution also notably omits protecting the freedom of religious ***expression***.[19] The authoritarian Chinese Communist Party ("CCP") is very suspicious of religion as a political motivator, and it therefore uses registration and surveillance as tools to control religious activity.[20] Places of worship and religious groups must be registered with the Chinese government's State Administration for Religious Activities ("SARA," formerly the Religious Affairs Bureau). The CCP uses security forces to control religious groups not recognized by the government.

The CCP recognizes only five religions (Buddhism, Islam, Taoism, Catholicism, and Protestantism), and has withstood attempts to

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[18] CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK, *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/kn.html (last visited June 19, 2008)

[19] U.S. DEP'T OF STATE, CHINA: INTERNATIONAL RELIGIOUS FREEDOM REPORT, 2007. Available at http://www.state.gov/g/drl/rls/irf/2007/90133.htm (last visited June 20, 2008).

[20] *Id.*

register new ones.[21] Groups like house churches, the unrecognized Roman Catholic Church, Falun Gong, and the Dalai Lama and his Tibetan followers operate outside of the registered boundaries. Religious groups have sometimes resisted registration with the SARA because of rules that require the name and address of all members (for fear of what the government will do with such information).

Registered groups assent to CCP-standardized theological formulations, and the distribution of state censored messages.[22] The Chinese government dictates the theological content of what is taught in registered places of worship and restricts the public expressions of religious belief by members of registered places of worship:

> China continues to arrogate to itself the rights to determine religious doctrine, determine what is Christian heterodoxy, and designate religious leaders * * *. Religious leaders cannot preach outside of their own area. They and their venue must be approved by the government. Religious services and members are subject to monitoring. Sermons must stick to approved topics under penalty of arrest.

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[21] *Id.*

[22] *Id.*

> Seminaries and schools for theological training exist but are tightly controlled: Students, the Chinese authorities believe, must be "politically reliable." * * * * Registration [of Christian churches] requires that churches desist from speaking about the Second Coming of Christ, the gifts of the Spirit, the story of Creation in Genesis, [or] certain sections of the Catholic Catechism.

Freedom House Center for Religious Freedom,[23] *Report Analyzing Seven Secret Chinese Government Documents* (Feb. 11, 2002) at 2.

The CCP imposes criminal punishment upon members of unregistered religious groups for assembling with others, teaching religious beliefs (even to their own children), publicly professing their beliefs, receiving donations, holding or administering land or buildings, issuing or selling religious publications, managing property and income, and creating social service enterprises.

Unregistered religious groups have no legal standing to bring challenges against the actions of

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[23] Now *amicus* Hudson Institute's Center for Religious Freedom.

government officials.[24] Therefore, they are particularly vulnerable to abusive police practices and denials of due process. Although religious regulation varies from jurisdiction to jurisdiction, unregistered religious minority groups throughout the country are frequently arrested, harassed, or sent to labor camps.

In 1999, the Chinese government added the so-called Anti-Cult Law (Article 300) to its Criminal Law Code.[25] The Anti-Cult Law created extensive

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[24] *See* Registration Procedures for Venues for Religious Activity, (promulgated by SARA's predecessor, the Religious Affairs Bureau of the State Council, May 1, 1994) art. 9, translated in http://www.1488.com/english/laws/public/#1 (last visited: June 22, 2008) (requiring religious activities to register to be certified as juridical persons, and stating that a religious venue as juridical person "independently enjoys civil rights and takes on civil responsibilities"); Freedom of Religious Belief in China, Information Office of the State Council of the People's Republic of China Beijing (October, 1997). http://news.xinhuanet.com/employment/2002-11/18/content_633195.htm ("*Once* a site for religious activities is registered according to law it has legal status and its lawful rights and interests shall be protected.") (emphasis added); Regulation Governing Venues for Religious Activities, (promulgated by the State Council, Jan. 31, 1994) art. 2, translated in http://www.1488.com/english/laws/public/#3 (last visited: June 22, 2008) (requiring registration to establish a religious venue).

[25] Criminal Law of the People's Republic of China (promulgated by the Fifth National People's Congress, Jul. 1, 1979) available at

powers for authorities to suppress "cults."[26] The Chinese government quickly began using the Anti-Cult Law as a means to dismantle disfavored religious groups.

There are widespread allegations of torture of religious believers in China. Documented torture methods include "the use of beatings, use of electric shock batons; cigarette burns; * * * use of handcuffs or ankle fetters for extended periods (including in solitary confinement or secure holding areas), . . . being forced to maintain uncomfortable positions, such as sitting, squatting, lying down, or standing for long periods of time, sometimes with objects held under arms; deprivation of sleep, food or water; . . . denial of medical treatment and medication; hard labour; and suspension from overhead fixtures from handcuffs." [27]

China's labor camps are considered "re-education" camps and attempt to force detainees to relinquish

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http://www.cecc.gov/pages/newLaws/criminalLawENG.php (last visited June 22, 2008).

[26] Article 300 of the Criminal Law of the People's Republic of China, *id.*

[27] Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Civil &Political Rights, Including the Question of Torture & Detention*, [hereinafter *Civil & Political Rights*], at 13, delivered to the Economic & Social Council, Comm'n on Human Rights, E/CN.4/2006/6/Add.6 (Mar 10. 2006).

their beliefs.[28] Reports estimate that up to 50% of prisoners in the re-education labor camps are Falun Gong members. The UN Special Rapporteur noted that fellow detainees lead other detainees through the re-education and the practice of religion is prohibited.[29] Even within the normal prison system, a Tibetan nun alleged that she was beaten for not participating in Chinese patriotic songs.[30] After recent unrest in Tibet, the Chinese government has begun "reeducation" programs that include forcing Tibetan monks to denounce the Dalai Lama, a figure they revere as holy.[31]

State control of information and ideology in China is such that in some cases, the spread of information about Chinese practices with regard to religious organizations is a sufficient ground for arrest and imprisonment. A court in 2004 sentenced three men

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[28] US IRF Report 2007; Amnesty International Report, *Fear of Ill-treatment or Torture/health Concern*, ASA 17/062/200417 (Dec. 14, 2004), available at http://www.amnesty.org/en/library/asset/ASA17/062/2004/en/dom-ASA170622004en.pdf.

[29] *Civil & Political Rights,* at 19.

[30] Amnesty International Press Report, *China: Tibet's Longest-Serving Female Prisoner of Conscience Finally Released* Feb 27, 2004, available at http://www.amnesty.org/en/library/asset/ASA17/010/2004/en/dom-ASA170102004en.html.

[31] Howard French, *New Ethnic Unrest Erupts in a Tibetan Region of China*, N.Y. TIMES, April 5, 2008 at A8.

to prison terms for reporting on abuse and destruction of house churches to a US-based magazine.[32]

3. Religious persecution in Burma

Burma has been ruled by successive military regimes since General Ne Win seized power in a coup in 1962. The current ruling military regime, known as the State Peace and Development Council ("SPDC"), systematically persecutes minority religions such as Christianity and Islam. The SPDC restricts the building of places of worship, distribution of religious literature, censors sermons, and arbitrarily detains Christian and Muslim leaders. Muslims and Christians are often refused permits for religious gatherings, and for any renovation or construction of places of worship.[33]

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[32] Amnesty International News, *China: Religious Freedom Rhetoric Fails to Translate into Reality*, ASA 17/065/2004, Dec. 21, 2004, available at http://www.amnesty.org/en/library/asset/ASA17/065/2004/en/dom-ASA170652004en.pdf.

[33] U.S. DEP'T OF STATE, BURMA: INTERNATIONAL RELIGIOUS FREEDOM REPORT, 2007. Available at http://www.state.gov/g/drl/rls/irf/2007/90131.htm (last visited June 20, 2008); *see also* Religious Persecution: A Campaign of Ethnocide Against Chin Christians in Burma, Chin Human Rights Organisation, February 2004, http://www.chro.org/images/stories/File/pdf/ReligiousPersecution.pdf (hereinafter "CHRO Report") and *Crackdown on Burmese*

The junta has closed down mosques and churches, sometimes forcibly demolishing them.[34] The Burmese army has also destroyed crosses on public display in villages in recent years, often forcing Christian villagers to construct Buddhist temples in place of the crosses.[35] On 3 January 2005, Burmese army troops pulled down a 15-metre (50-foot) cross, believed to be the last remaining cross on public display, on a hillside in Matupi, in Chin State of north-western Burma.[36]

The government sometimes forces non-Buddhists to convert to Buddhism. For instance, there is a state sponsored campaign to coerce minority Christians to convert to Buddhism. The Burmese junta targets ethnic Chin Christians for forced labour and other abuses while exempting families who

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Muslims, Human Rights Watch, July 2002, http://www.hrw.org/backgrounder/asia/burmese_muslims.pdf.

[34] Burma: IRF Report, *supra*. *See* CHRO Report, *id.*, for full account of stop orders and destruction of churches by the Burmese junta, and *Crackdown on Burmese Muslims*, Human Rights Watch, July 2002, at 4, http://www.hrw.org/backgrounder/asia/burmese_muslims.pdf.

[35] Benedict Rogers, *Burma: Continuing large-scale religious freedom violations*, F18NEWS, April 5, 2005, http://www.forum18.org/Archive.php?article_id=538&pdf=Y; *see* also CHRO Report, *supra*, for an account of crosses destroyed by the Burmese junta.

[36] *Id.*

convert to Buddhism.[37] Those who convert also

[37] A pamphlet distributed widely by Buddhist monks of the Hill Region Buddhist Missions, a group brought into the Chin state by the Burmese junta sets out the following ways to attack Christianity in the region:

1. To attack Christian families and the progress of Christians.
2. To criticize against the sermons which are broadcast from Manila, Philippines.
3. To criticize God as a narrow-minded and egotistical who himself claimed that "There is no god except eternal God".
4. To criticize Christian ways of life as corrupted and inappropriate culture in Burma.
5. To criticize the preaching of Christians where it has penetrated.
6. To criticize Christianity by means of pointing out its delicacy and weakness.
7. To stop the spread of the Christian movement in rural areas.
8. To criticize by means of pointing out "there is no salvation without purchased by the blood of Christ".
9. To counterattack by means of pointing out Christianity's weakness and overcome this with Buddhism.
10. To counter the Bible after thorough study.
11. To criticize that "God loves only Israel but not all the races".
12. To point out ambiguity between the two testaments.
13. To criticize on the point that Christianity is a partisan religion.
14. To criticize Christianity's concept of the Creator and compare it with the scientific concept.
15. To study and access the amount given in offerings.
16. To criticize the Holy Bible after thorough study.

receive other benefits such as monthly allowances and rations.[38] The SPDC also force Christian villagers to work during religious festivals and on Sundays.[39] Some Chin Christian children have been lured away from their families with the offer of a good education; the authorities however force these children, some as young as 11, to become novice monks.[40]

Although the junta purports to support Buddhism, which is the majority religion, it in fact seeks to control the religion and has used force to suppress dissent amongst Buddhist monks. It restricts efforts by Buddhist clergy to promote human rights. The crackdown on the "Saffron Revolution" in 2007 is one of the more visible examples of religious persecution of both majority

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17. To attack Christians by means of both non-violence and violence means.

CHRO Report, *supra*.

[38] CHRO Report, *supra*.

[39] In Sabunte, Chin State, Burma Army soldiers ordered villagers to work as porters for the military from 20 December 2003 until 19 January 2004, meaning they were unable to celebrate Christmas and New Year in their villages. Benedict Rogers, *Burma: Continuing large-scale religious freedom violations*, F18NEWS, April 5, 2005, http://www.forum18.org/Archive.php?article_id=538&pdf=Y

[40] Benedict Rogers, *Burma: Continuing large-scale religious freedom violations*, F18NEWS, April 5, 2005, http://www.forum18.org/Archive.php?article_id=538&pdf=Y; *see* also CHRO Report, *supra*.

and minority religious groups that occurs regularly at the local level.[41] For example, in 1988, an estimated 600 monks were killed during a pro-democracy demonstration.[42] When monks and novices refused to accept alms from military officials or perform religious ceremonies in protest at the military regime in 1990 and 2003 during a campaign known as "Overturning the Bowls," they were arrested.[43] Monks who are arrested and imprisoned are forcibly disrobed and tortured.[44]

4. Religious persecution in Uzbekistan.

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[41] *See, e.g.*, Seth Mydans, *Myanmar Monks' Protest Contained by Junta's Forces*, NEW YORK TIMES, September 28, 2007, available at http://www.nytimes.com/2007/09/28/world/asia/28cnd-myanmar.html.

[42] Assistance Association for Political Prisoners (Burma), Burma: A Land Where Buddhist Monks Are Disrobed and Detained in Dungeons, at 13-4, available at http://www.aappb.org/monkreport.pdf (hereinafter "Buddhist Monks Report"). Two years later, the military opened fire at more than 7,000 monks and novices who marched through the streets of Mandalay, receiving alms peacefully in memory of the 1988 uprising. *Id*. at 14-5.

[43] Buddhist Monks Report, *id*. at 14-5, 20-2.

[44] *See, e.g.*, Assistance Association for Political Prisoners (Burma) Press Release, *Number of Political Prisoners Increases in 2007: Crackdown in Burma Continues*, http://www.aappb.org/release100.html.

Uzbekistan is officially a democratic country. But human rights groups including Human Rights Watch, Amnesty International, and the U.S. State Department call Uzbekistan "an authoritarian state with limited civil rights."[45] Uzbekistan perpetrates widespread human rights violations, including torture, arbitrary arrests, and various restrictions of freedoms: of religion, of speech and press, of free association and assembly, and particularly target religious believers, independent journalists, human rights activists, and political opposition members. In 2005, Freedom House included Uzbekistan in its list of "The Worst of the Worst: The World's Most Repressive Societies."

A campaign to control the Muslim faith has become a major national operation consisting of "a network of secondary and higher educational institutes, who educate the state-appointed imams of the country's mosques."[46] Students in religious education (which is only legal if administered by the state) are instilled with loyalty to the President while the government also sustains a network of "informers

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[45] U.S. DEP'T OF STATE, UZBEKISTAN: INTERNATIONAL RELIGIOUS FREEDOM REPORT, 2007. Available at http://www.state.gov/g/drl/rls/irf/2007/90237.htm (last visited June 20, 2008).

[46] Igor Rotar, *Uzbekistan: Religious Freedom Survey, May 2006*, F18NEWS, May 10, 2006, available at: http://www.forum18.org/Archive.php?article_id=777.

amongst the students."[47] Muslim clergy are also kept under a tight watch by the government and do not have the freedom to write their own Friday addresses but rather must deliver ones pre-approved by the government religious leadership.[48]

Uzbekistan is known for arresting devout religious believers under the guise of an unrelated criminal violation. For instance, the State Department reported that "police planted narcotics, ammunition, and, beginning in 1999, religious leaflets, on citizens to justify their arrests."[49] Muslims who are thus arrested are further persecuted once they are imprisoned, as they are "often prohibited or prevented from praying regularly, possessing a Koran, and observing religious obligations."[50] Furthermore, prisoners may be subject to even more severe punishment for rejecting government-approved, "interpretations of Islam presented by imams visiting their prisons."[51]

The government has also been active in repressing Protestant Christians. One university

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47 *Id.*

48 *Id.*

49 U.S. DEP'T OF STATE, UZBEKISTAN: INTERNATIONAL RELIGIOUS FREEDOM REPORT, 2003. Available at http://www.state.gov/g/drl/rls/irf/2003/24443.htm (last visited June 20, 2008).

50 *Id.*

51 *Id.*

student was reported for holding religious meetings in his home. When the policed raided his apartment during one of the meetings they fined the leader and forced two of the attendants to sign statements renouncing their faith.[52]

These examples illustrate a small portion of the larger scale crusade against religious freedom and other human rights. As a result of such violations, Uzbekistan has long been a concern of the United Nations (UN) and the United States. Uzbekistan was watched under the UN's 1503 procedure—a confidential scrutinizing method—for many years until 2007 when the Human Rights Council did not vote to renew it.[53] In 2003, the presence of widespread torture methods led the UN special rapporteur to issue recommendations and while the 1503 project was lifted, a special report on torture in Uzbekistan was issued again in 2007.[54]

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[52] Igor Rotar & Felix Corley, *Uzbekistan: Despite official denials, religious freedom violations continue*, WorldWide Religious News, Nov. 28, 2006, http://www.wwrn.org/article.php?idd=23536&sec=59&con=40.

[53] Human Rights Watch, *UN: Rights Council Fails Victims in Iran, Uzbekistan*, March 27, 2007: http://www.hrw.org/english/docs/2007/03/27/uzbeki15577.htm.

[54] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Nov. 5-23, 2007, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention*, U.N. Doc. CAT/C/UZB/CO/3.

5. Religious persecution in Turkmenistan.

Turkmenistan was formerly under the control of President Saparmurat Niyazov. He created a personality cult around himself which included oaths of loyalty, a set of "vanity scriptures" called the Ruhnama, and the installation of portraits of himself in mosques and churches throughout Turkmenistan. Newspapers were topped by the oath, which read:

> Turkmenistan, you are always with me in my thoughts and in my heart. For the slightest evil against you let my hand be cut off. For the slightest slander about you let my tongue be cut off. At the moment of my betrayal of my motherland, of her sacred banner, of Saparmurat Turkmenbashi [Father of the Turkmens] the Great [i.e. President Saparmurat Niyazov], let my breath stop.[55]

Imams were also instructed to begin services with sermons praising him and to end daily prayers with the oath.[56] Forum18 reports President Niyazov as once stating "we have one religion and unique

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[55] Felix Corley, *Religious Freedom Survey*, F18NEWS, October 2005, http://www.forum18.org/Archive.php?article_id=672.

[56] Felix Corley, *President's Personality Cult Imposed on Religious Communities*, FORUM18, Mar 1, 2005, http://www.forum18.org/Archive.php?article_id=522.

traditions and customs, and there is no need for people to look beyond these."[57]

Mosques were required to give equal place to the Ruhnama as the Qu'ran and Russian Orthodox churches were required to have at least two copies in the parish library.[58] The Ruhnama was used in all levels of school instruction, and continue to be present today.[59] Texts from the Ruhnama are inscribed on a Mosque in President Niyazov's hometown. His preferred title is inscribed on the wall facing Mecca, which offends some Muslims.[60] His presidency ended with his death in December 2005.[61]

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[57] Igor Rotar, *"Virtual Catastrophe" for Muslim Theological Faculty*, FORUM18, July 22, 2005, http://www.forum18.org/Archive.php?article_id=614.

[58] United States Commission on International Religious Freedom [hereinafter USCIRF], Turkmenistan Policy Focus 2 (Winter 2007) http://www.uscirf.gov/images/stories/pdf/Turkmenistan/turkmenistan_policyfocus1207.pdf.

[59] U.S. DEP'T OF STATE, TURKMENISTAN: INTERNATIONAL RELIGIOUS FREEDOM REPORT, 2007. Available at http://www.state.gov/g/drl/rls/irf/2007/90236.htm (last visited June 20, 2008).

[60] USCIRF 6.

[61] Since President Niyazov's death, President Berdimuhammedov has nominally adjusted policies. USCIRF 7. The place of the Ruhnama has been decreased in public schooling although it is still present in some state-controlled mosques. USCIRF 4 & 6.

Some religious minority members lost their jobs if they refused to pay fines or sign statements admitting their guilt in leading worship services.[62] Others were forced under official pressure to sign statements claiming to have quit.[63] Jehovah's Witnesses who peacefully object to compulsory military service have been sentenced to prison terms in forced labor camps.[64] Other religious dissension may result in loss of employment.[65]

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What these examples demonstrate is that the evil of religious persecution aimed specifically at scandalizing the conscience is a widespread one. It cuts across all times, cultures and places, and members of every religion have at some point been its victims. It is a sickness of the human soul. American asylum law should not act as if it were ignorant of this fact, or worse, consent to the manipulation of conscience as a tool of persecution,

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[62] Felix Corley, *Old "Offences" Used to Punish Current Religious Activity*, F18NEWS, July 20, 2007, http://www.forum18.org/Archive.php?article_id=522.

[63] *Id.*

[64] Felix Corley, *Fifth Conscientious Objector to be Prosecuted?* F18NEWS, Aug. 31, 2007, http://www.forum18.org/Archive.php?article_id=1013, USCIRF 4.

[65] Turkmenistan: IRF Report, *supra*.

by allowing that very method of persecution to become a barrier to asylum.

CONCLUSION

Eritrea should be condemned for forcing Negusie to participate in persecuting his fellow believers. Granting asylum to victims of religious persecution is one way to do that. Moreover, religious people and religious organizations will likely suffer more persecution, not less, if the Fifth Circuit's ruling is not overturned. Its judgment should therefore be reversed.

Respectfully submitted,

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